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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,558	03/23/2004	David L. Marvit	073338.0183 (04-50455FLA)	4048
5073	7590	11/20/2006	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				LIANG, REGINA
		ART UNIT		PAPER NUMBER
		2629		

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,558	MARVIT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Regina Liang	2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 March 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,4,6-8,11,13-22 is/are rejected.  
 7) Claim(s) 2,3,5,9,10,12 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 23 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 11/21/05,3/23/04.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 15-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 15-21 although written to include a computer readable medium, however for a logic, i.e., computer program, to be statutory subject is must be claimed as a computer program stored on a computer readable medium as set forth in page 52 of the Interim Guidelines, thus without such the claims are non-statutory in nature.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 4, 8, 11, 15, 18, 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Orchard (US 6,834,249).

As to claims 1 and 22, Orchard discloses a motion controlled handheld device comprising:

a display having a viewable surface and operable to generate an image (see Figs. 5-11);

a motion detection module (motion detection sensors) operable to detect motion of the device within three dimensions and to identify components of the motion in relation to the viewable surface (col. 7, lines 17-22); and

a motion response module (motion control agent 114) having a first mode of operation and a second mode of operation; the motion response module operable in the first mode of operation to monitor the motion of the device, to determine that the motion matches a predetermined mode selection trigger, and, in response to determining that the motion matches the predetermined mode selection trigger, to measure a baseline orientation of the device based on measurements of the components, and to switch to the second mode of operation (for example, see col. 7, lines 22-25, the motion threshold corresponds to the predetermined mode selection trigger; the device switches to a page mode of operation as shown in Figs. 6 and 7 in response to the motion of one or more sensors reaches the motion threshold, or switches to zoom-in or zoom-out mode of operation as shown in Figs. 10, 11 in response to the motion of one or more sensors reaches the motion threshold);

the motion response module operable in the second mode of operation to monitor the motion of the device, to determine movement of the device in relation to the baseline orientation using the components of the motion, and to modify the image in response to the movement (see Figs. 5-11).

As to claim 4, Orchard teaches once a motion threshold of one or more sensors is reached, the sensors generate an indication of such motion for motion control agent, which issues control signals to controller to update the display content. So, it is inherent when the motion of the one or more sensors does not reach the motion threshold, the device does not switch to the

second mode, which reads on the motion response module is operable in the first mode of operation to disregard motions that do not match the predetermined mode selection trigger.

Claims 8, 11, 15, 18, which are method claims corresponding to the above apparatus claims 1, 4, are rejected for the same reasons as stated above since such method "steps" are clearly read on by the corresponding "means".

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 13, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orchard in view of Bartlett (US 6,573,883).

Orchard teaches a plurality of gestures, each gesture defined by a motion of the device with respect to a position of the device (each movement as shown in Figs. 5-11 correspond to a gesture).

Orchard does not disclose a gesture database and the gesture mapping. However, Fig. 3 of Bartlett teaches a motion controlled handheld device comprising a gesture database (a catalog of gesture commands) comprising a plurality of gestures, and a gesture mapping database mapping each of the gestures to a corresponding command. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Orchard to have the feature of a gesture database and database mapping as taught by Bartlett so

as to “enable use of different gesture commands” such that “a great range of gesture commands is possible given the use of different axes and angular directions of rotation for a variety of different patterns of movement” (col. 2, lines 39-40 of Bartlett).

7. Claims 7, 14, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orchard and Bartlett as applied to claims 6, 13, 20 above, and further in view of Feinstein (US 2002/0190947).

Orchard teaches using one or more sensors for sensing the motion of the device. Orchard as modified by Bartlett does not explicitly disclose using first, second and third accelerometer for sensing the motion of the device along a first, second and third axis. However, Feinstein teaches using three accelerometers for sensing the motion of the device along a first, second and third axis (see Fig. 14). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Orchard as modified by Bartlett to use three accelerometers as taught by Feinstein since the three accelerometers measure the acceleration of the device along three independent directions precisely.

*Allowable Subject Matter*

8. Claims 2, 3, 5, 9, 10, 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Regina Liang  
Primary Examiner  
Art Unit 2674

10/27/06